IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

Crl.MC.No. 3450 of 2007()

C.M.P.NO.1548/04 IN CC.663/2005 of JUDL. MAGISTRATE OF FIRST CLASS-IV, KOZHIKODE

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PETITIONER: ACCUSED:

FATHER JEO PAYYAPILLI,
NAVAJYOTHIS RENEWAL CENTRE, ERANHIPALAM,KOZHIKODE.

BY ADV. SRI.P.K.RAMKUMAR
SMT.ANITHA MENON

RESPONDENTS: COMPLAINANT:

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1. FATHER P.J.JOSEPH @ DR.J.J.PALLATH,
S/O. JOSEPH SWAM, MANCHAPPALAM, KANNUR DISTRICT.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3450 of 2007

Dated this the 16th day of November, 2007

ORDER

The petitioner is the 3rd accused in a prosecution under Section 500 I.P.C. Cognizance has been taken by the learned Magistrate. The petitioner is a Vicar of a Church at Mahi. The petitioner applied for exemption from personal appearance. The learned Magistrate, by the impugned order, rejected the prayer for exemption. The learned counsel for the petitioner submits that the rejection of the prayer for exemption is totally unjustified. The learned Magistrate had already granted exemption to accused 1 and 2 in the case after adverting to the decision in **Raman Nair v. State of Kerala** [1999 (3) K.L.T 714]. The petitioner had apprised the learned Magistrate of the circumstances under which he has claimed exemption. The offence is a summons offence and is punishable with imprisonment for a term of 2 years or with fine or with both. There was absolutely no necessity for the learned Magistrate to insist on the personal appearance of the petitioner, submits the learned counsel for the petitioner.

2. I am inclined to agree with the learned counsel for the petitioner. The impugned order does not reveal any satisfactory

reasons to justify rejection of the prayer for exemption from personal appearance. In a prosecution under Section 500 I.P.C, I find no reason why personal appearance of the petitioner must be insisted ritualistically. Only if absolutely essential for the further progress of the case, need the personal appearance of the petitioner be insisted. I am satisfied that this petition deserves to be allowed.

3. In the result:

a) This Crl.M.C is allowed;

b) The impugned order is set aside;

c) The learned Magistrate is directed to exempt the petitioner from personal appearance under Section 205 Cr.P.C and to permit him to be represented by counsel. His personal presence need be insisted only if the same is essential for the further progress of the case.

(R.BASANT, JUDGE)

rtr/-